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No. 73-1807

In the
Supreme Court of the United States
October Term, 1974

STANLEY A. PAPIERZ, et al.,

Petitioners,

vs.

ROBERT K. RAUTH,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Respondent respectfully submits that Petitioners have failed to advance any special and important reasons why this Court should grant the writ. The Appellate Court of Illinois, First District, did not decide an important federal or state question, did not sanction any departure from the accepted and usual course of judicial proceedings, nor were Petitioners deprived of their property without due process of law.

The Question Petitioners Present for Review

Petitioners state that the question presented for review is whether the appointment of a receiver to manage an

apartment building complex, in which Respondent holds a thirty percent interest, deprived Petitioners of their property without due process of law (Pet., pp. 4, 7).

The Appellate Court of Illinois, First District, held that it did not (Pet., pp. 15a, 16a). Petitioners filed in the Supreme Court of Illinois their Petition for Leave to Appeal from the decision of the Appellate Court, advancing the same arguments as they now present here (Pet., p. 7). The Illinois Supreme Court denied the Petition for Leave to Appeal (Pet., pp. 17a, 18a).

ARGUMENT

Rule 315(a) of the Rules of the Supreme Court of Illinois (Ill. Rev. Stat., 1973, ch. 110A, §315(a)) provides as follows:

> "§ 315. (*Supreme Court Rule* 315). *Leave to Appeal From the Appellate Court to the Supreme Court*
>
> (a) *Petition for Leave to Appeal: Grounds.* A petition for leave to appeal to the Supreme Court from the Appellate Court may be filed by any party, including the State, in any case not appealable from the Appellate Court as a matter of right. Whether such a petition will be granted is a matter of sound judicial discretion. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered: the general importance of the question presented; the existence of a conflict between the decision sought to be reviewed and a decision of the Supreme Court, or of another division of the Appellate Court; the need for the exercise of the Supreme Court's supervisory authority; and the final or interlocutory character of the judgment sought to be reviewed. Amended and effective Nov. 30, 1972."

The authors of the Historical and Practice Notes to Rule 315(a) state:

> "This paragraph was adopted from Rule 19 of the Rules of the Supreme Court of the United States."

The instant Petition merely reiterates the same arguments made by Petitioners in their Petition for Leave to Appeal to the Illinois Supreme Court and by that Court found wanting. A denial by the Illinois Supreme

Court of a Petition for Leave to Appeal adds to the stature and effect of an appellate court decision and is an approval of the decision, or the result reached, *Corbett* v. *Devon Bank,* 12 Ill. App. 3d 559, 299 N.E. 2d 521. Consequently, the instant Petition constitutes an appeal from the considered decision of ten judges—three Appellate Court judges and seven Illinois Supreme Court justices.

Contrary to Petitioners' argument that a receiver was appointed without notice, the Appellate Court found:

> "The counterclaimant [Respondent] asked for a receiver after this Court decided the equities in his favor in 1970. The counterdefendants [Petitioners] had notice of this request for a receiver and were given an opportunity to present written and oral arguments opposing the appointment of a receiver before the now-disputed decree was issued in 1973, as evidence by the record of proceedings before the chancellor upon remandment." (Pet., p. 15a.)

The Appellate Court recognized the appointment of a receiver is a harsh remedy and only to be utilized when it is needed to insure that complete justice is done between the parties (Pet., p. 15a). But the same Appellate Court in two separate opinions found that Petitioners had perpetrated a deliberate fraud upon Respondent in depriving him of his thirty percent interest in the apartment building complex. (Pet., pp. 15a, 16a-37a.) In upholding the appointment of a receiver under these circumstances the Court said (Pet., p. 16a):

> "Considering that counterdefendants [Petitioners] were found to be joint venturers with Rauth [Respondent] and defrauded him and have contumaciously and consistently resisted this conclusion in various

ways, including behavior which appears to be continuing bad faith and at the very least a badge of fraud, we hold the appointment of a receiver and the imposition of the complained of temporary injunctions were proper in this case."

We respectfully submit that the foregoing language of the Appellate Court supplies a more eloquent answer to Petitioners' contentions than any reply we can make.

CONCLUSION

It is respectfully submitted that it clearly appears from the record before this Court that the Illinois Appellate Court did not decide an important federal or state question, did not sanction any departure from the accepted and usual course of judicial proceedings, nor did it deprive Petitioners of their property without due process of law. The Petition for a Writ of Certiorari was improvidently filed and should be denied.

Respectfully submitted,

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